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Dated: January 4, 2010

Electronic Signature for William A. Di Bianca: /William A. Di Bianca/

Docket No.: SPINE 3.0-437 CIPCIPCIPCIPCIPCIPCON VI  
(PATENT)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent Application of:  
Errico et al.

Application No.: 10/784,597

Confirmation No.: 8309

Filed: October 12, 2004

Art Unit: 3738

For: ARTIFICIAL INTERVERTEBRAL DISC  
TRIALS HAVING A CYLINDRICAL  
ENGAGEMENT SURFACE

Examiner: B. E.  
Pellegrino

**PETITION UNDER 37 C.F.R. § 1.78(A)(3)**  
**TO CORRECT PRIORITY INFORMATION**

MS Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

**I. SUMMARY**

This petition is submitted to correct the priority information in U.S. Patent Application 10/784,597 ("the '597 application"). In particular, the relationship information, in the original filing on October 12, 2004, for the applications from which benefit is claimed is believed to be incorrect and thus correction is sought. The petition fee set forth in 37 C.F.R. § 1.17(t) of \$1,410.00 is provided herewith.

Petitioner submits that the Domestic Priority Data as stated in the Filing Receipt mailed on August 10, 2004 is incorrect. Petitioner notes that two Requests for Corrected Filing Receipt were submitted on October 3, 2005, and January 15, 2008 in order to correct the Domestic Priority Data as shown in the attached Supplemental Application Data Sheet and in the revisions to the specification in an Amendment submitted

herewith today. The U.S. Patent Office issued a Corrected Filing Receipt on February 4, 2008 that correctly lists the priority information. Petitioner respectfully submits that any delay in submitting the correct priority data to the U.S. Patent & Trademark Office ("USPTO"), from the time the claim was due to the date the claim was filed, was unintentional.

## **II. FACTS**

A statement of domestic priority data, on the first page of the specification of the '597 application, filed October 12, 2004, included an incorrect claim for priority under 35 U.S.C. §120.

Although all of the prior applications were included in the cross-reference paragraph of the specification, the relationship information was described as "continuing" applications and did not adequately detail whether the relationship was a continuation or a continuation-in-part application. Further, the prosecuting attorney inadvertently omitted three applications from the specification of the '597 application. No Application Data Sheet was filed in the '597 application.

Prior to the filing of the '597 application, the '597 application, along with all the related files, were transferred as just one part of a sizeable patent portfolio to the law firm of Lerner, David, Littenberg, Krumholz and Mentlik, LLP ("Lerner, David"). The present application was filed containing priority information from applications filed by previous counsel before the transfer of the files.

After the transfer of files, the prosecuting attorney at Lerner David recognized that the domestic priority information in a number of the transferred applications including the '597 application was incorrect.

Application No.: 11/657,268

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### **III. NATURE OF PETITION**

Petitioner respectfully submits this petition in connection with the correction of domestic priority, asserting that the delay by Petitioner in submitting the correct priority data to the USPTO, from the time the claim was due and the date the claim was filed, was unintentional.

For the good cause shown, it is respectfully requested that the instant Petition be granted and the priority corrected as shown in the Supplemental Application Data Sheet and amendments to the Cross-Reference to Related Applications paragraph of the specification included in an Amendment filed today and in the Preliminary Amendment filed on January 15, 2008.

The Director is hereby authorized to charge our Deposit Account No. 12-1095 to cover the fee set forth in 37 C.F.R. § 1.17(t). If there are any additional charges in connection with this requested Petition, please charge Deposit Account No. 12-1095 therefor.

Dated: January 4, 2010

Respectfully submitted,  
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A. Di Bianca/  
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